

MAINE HARNESS RACING COMMISSION

MINUTES OF MEETING

December 12, 2014

Gambling Control Board Conference Room

Department of Public Safety Building

45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Gary Reed and William McFarland.  
Commissioner Dirk Duncan was absent.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Ralph Canney and Carol Gauthier.

The first order of business was to approve the minutes. Commissioner Reed made a motion to approve the minutes of August 14, 2014 as presented. Commissioner Dresser seconded. Vote 2-0. Commissioner Reed made a motion to approve the minutes of August 27, 2014 as presented. Commissioner Dresser seconded. Vote 2-0. Commissioner Reed made a motion to approve the minutes for September 29, 2014 as presented. Commissioner Dresser seconded. Vote 2-0. Commissioner McFarland made a motion to approve the minutes for October 29, 2014 as written. Commissioner Dresser seconded. Vote 2-0. Commissioner Reed made a motion to approve the minutes for November 13, 2014 as presented. Commissioner McFarland seconded. Vote 3-0.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser asked Mr. Jackson what would be happening today because not all of the parties were present. Mr. Jackson stated that #1 would be heard today. Number 2, Mr. Vafiades asked for a continuance which was granted by Attorney Guay. Number 3 & 4 the matter of Ms. Sprague will be continued. Number 5 the appeal of Mr. Sowers, Mr. Jackson has asked that this matter be continued and it was granted by Attorney Guay and we will hear that at a later date. Number 6, Mr. Childs will be heard today. Number 7 & 8 will be continued until February. The reason for that is Topsham Fair and Northern Maine Fair has withdrawn the request to reopen because they are going to keep the days they were awarded on November 13, 2014. Bangor has requested to reopen and he has received a request from Scarborough and he would rather do this in a more formal setting. He is asking to continue until February. Commissioner Dresser asked if they would be hearing Ms. Sprague's hearing today. Mr. Jackson stated that he has not heard from her and that he would ask to continue the matter to the January meeting. Commissioner Dresser suggested that we hand deliver the notice of hearing to Ms. Sprague so we know she got the notice for next time.
2. Commissioner Dresser stated that they would take up item #6 Dana Childs complaint number 2014 MSHRC 0022. She handed the hearing over to Attorney Guay as hearing officer. Attorney Guay stated that the hearing on the appeal is done de novo and all the evidence is considered by the Commissioners; however, the burden is on the appellant to show that the judgment was in error. Failing to do so, if the Commissioners do not vote to grant the appeal, the ruling will stand. Attorney Guay asked questions of the Commissioners and they responded with no. The licensee was present and represented by William Childs. The record will reflect that there are no prehearing objections to any of the procedures up to this point. He also stated that Mr. Childs has the burden so he would go first. He asked if he had any exhibits that he would like to introduce. Mr. Childs stated that he has no exhibits but he would like to establish for the record that they are proceeding under section 54 racing

violations, paragraph 1, subparagraph M which is ‘no driver shall commit any act which shall impede the progress of another horse or cause him to “break” ‘ that is his understanding. Mr. Jackson stated that is correct. Mr. Childs stated that they had a prehearing conference in this matter during which they discussed the question of whether the driver David Ingraham who was driving the horse in question might appear by telephone; and they came to an agreement that they would just enter a stipulation on the record that Mr. Ingraham would testify that he was driving the horse Dansan Flicka from the sixth hole in the fifth race at Bangor Raceway on October 17, 2014 and when his horse skipped at the eighth pole he did not have any physical contact with the trailing horse driven by Nick Graffam, Buckleberry Kate. Mr. Ingraham’s helmet, nor back, wheels or sulky was struck by the horse Buckleberry Kate whatsoever. Attorney Guay stated that was a lengthy stipulation. He asked Mr. Jackson if there were any elements of the stipulation that they have just heard that the State... Mr. Jackson stated that he would accept and agree to the stipulation offered by Mr. Ingraham. Attorney Guay asked the Commissioners if they had any questions. They had none. He asked Mr. Jackson if he had any exhibits. Mr. Jackson presented exhibit 1, Bangor Race Program October 17, 2014. Exhibit 2, appeal by Mr. Dana Childs; Exhibit 3, Notice of Hearing to Mr. Childs; Exhibit 4, Copy of MSHRC rule, Chapter 7, Section 54, Subsection 1, Paragraph M; Exhibit 5, Copy of MSHRC rule, Chapter 1, Section 1, Paragraph 38; Exhibit 6, Tape of race on October 17, 2014. Attorney Guay stated that the State has moved for the admission of exhibits 1-6. There was no objection to any of the exhibits by Mr. Childs. Mr. Childs stated that the evidence will show that during the 5<sup>th</sup> race at Bangor Raceway that David Ingraham was driving Dansan Flicka from the 6<sup>th</sup> hole and left the gate strongly was able to get towards the lead going through the first turn. He was three wide and nearing the 8<sup>th</sup> pole when his horse momentarily makes a brief run or described as putting in steps he does lose a little bit of ground and when that occurs, Nick Graffam driving the 6<sup>th</sup> horse Buckleberry Kate you will see from the video that his horse was quite unmanageable leaving the gate. He was having a great deal of difficulty steering the horse that evening. The horse was running in quite a bit. Likely, Mr. Graffam will explain that he is pulling on the right lines, pulling on both lines trying to keep her from galloping or running into someone else. His plan, Mr. Graffam will explain is to take his horse back behind Heath Campbell who is inside of him and that’s his plan to set behind Mr. Campbell. As they are going through the first turn, Mr. Graffam is trying to go backwards and coincidentally Mr. Ingraham’s horse skips in front of him and from his view of it he almost thinks that Mr. Ingraham’s momentarily bobble almost helps settle Mr. Graffam’s horse and then his horse is able to regain its stride and Mr. Graffam’s horse never breaks stride. Mr. Graffam’s horse becomes more manageable and he is able to back into the hole behind Mr. Campbell which was his plan from the beginning. Attorney Guay stated that he would like to have Mr. Jackson make an opening if he would like to or defer it to the beginning of his case. Mr. Jackson stated that he would defer it. Attorney Guay swore in Mr. Graffam. Mr. Childs asked questions of Mr. Graffam and asked him if he could explain his horse as she was approaching the gate and as the starter said “go”. How was she acting that evening. Mr. Graffam stated that the horse was uncontrollably hot that night and Mr. Childs’ horse, Flicka, made the miss step in front of him. Mr. Childs asked before we get to that. When you’re leaving the gate and you’re heading into the first turn, can you describe for them what your horse is doing with its head. Mr. Graffam stated that she was hot and he was see-sawing on her a little bit to try to control her. Mr. Childs asked what he meant by that. Mr. Graffam stated that you try to go like this to control her mouth a little bit, because she didn’t have a murphy on the inside that day. Mr. Childs asked when you say see-saw are you pulling with a very light touch. Mr. Graffam stated that he is pulling hard on her. Mr. Childs asked Mr. Graffam as he got into the first turn at the 8<sup>th</sup> pole did you see Mr.

Ingraham's horse take steps at the 8<sup>th</sup> pole. Mr. Graffam stated he did not. Mr. Childs asked how did he become aware that Mr. Ingraham's horse was having a difficulty at the 8<sup>th</sup> pole. Mr. Graffam stated that Mr. Campbell was on his left which is the inside of the track and he told him to watch it, and he looked around her and he could see Mr. Ingraham's horse making a bobble. Mr. Childs asked if he had a prerace strategy. Mr. Graffam stated that he did not but he saw a hole opening up behind Mr. Campbell. Mr. Childs asked if his plan was at that time was to take back your horse that you were having difficulty managing and put your horse behind Mr. Campbell. Mr. Graffam stated yes. Mr. Childs asked if that was what he ultimately did. Mr. Graffam stated yes. Mr. Childs asked if at the 8<sup>th</sup> pole Mr. Ingraham's action of his horse affect the outcome of the race for your horse. Mr. Graffam stated no. Mr. Childs asked if after Mr. Ingraham's horse regained its full stride, were you able to keep up with Mr. Ingraham's horse. Mr. Graffam stated no. Attorney Guay asked Mr. Jackson if he had any questions of Mr. Graffam. Mr. Jackson asked Mr. Graffam as he was coming out of the first turn at the 8<sup>th</sup> pole that your horse was a little hot and that means that it was getting ready to move on you, and you were trying to keep it under control by see-sawing with the reins. When you noticed that Mr. Ingraham's horse had gone off stride, what action did you take at that time. Mr. Graffam stated that when Mr. Campbell said watch it Nick, watch it Nick he looked to his left grabbed his horse Buckleberry Kate just to check her to see what was happening and by the time he looked, Mr. Childs' horse was already back pacing. He proceeded to go backwards. Mr. Jackson asked so your horse didn't gain any ground on Mr. Ingraham's when it went off stride and he was bringing it back under control. Mr. Graffam stated no. Mr. Jackson asked if he took into his horse as to not to go against him. Mr. Graffam stated yes. Attorney Guay asked if any of the Commissioners had questions. They had none at this time. He asked Mr. Childs if he wanted to redirect. Mr. Childs stated not at this time but you may want to keep him here. Attorney Guay asked Mr. Jackson to present his case. Mr. Jackson stated that they are going to prove to the Commission that the fact that Dansan Flicka did go on the break and Mr. Ingraham had to bring that horse under control that it did interfere and impede the progress of Mr. Graffam's horse because he had to take into that horse. Irregardless of what he had done prior to, he still had to take into that horse to prevent him from over taking the back of Mr. Ingraham; therefore, the actions by Mr. Ingraham did cause Mr. Graffam to take into his horse and lose ground. Attorney Guay asked Mr. Jackson for his first witness. Mr. Jackson called Mr. Bacon. Attorney Guay gave the oath to Mr. Bacon. Mr. Jackson asked questions of Mr. Bacon. He asked Mr. Bacon on the night of October 17, 2014 at Bangor Raceway race number 5 would you please explain to the Commission what you observed as a presiding judge as that race developed from the word "go". Mr. Bacon stated that they left the gate and Mr. Ingraham makes a break and we call out the break and there are two other judges with him. He wasn't sure they put up the inquiry sign. He stated that they treat all races the same and they are all very important races. They watched the replay and it was quite clear to them that Mr. Graffam's horse was greatly affected by the break. They watched it enough and said they have a big problem. He called Mr. Graffam to come to the phone and asked him that his horse was hot he could see into the turn, but it looks like you got him straightened out around the turn. His answer to him was "yes". He asked if Mr. Ingraham's break affected him. Mr. Graffam replied to Mr. Bacon that he had to take into his horse. When he talks to Mr. Graffam, he has him on speaker phone so it's not just himself and Mr. Graffam. It's both associate judges as well. He had to make a decision along with his two judges. It changed the position and not the outcome of the winner of the race. Attorney Guay asked if any Commission members had questions of Mr. Bacon. Commissioner McFarland asked if he could confirm that the decision was unanimous. Mr. Bacon stated absolutely. Mr. Jackson asked Mr. Bacon from the film that you observed

after the race when you were looking at the break and you determined that there was an issue with Mr. Graffam's horse at that point did you feel it necessary to talk to any other driver in that race. Mr. Bacon stated "no". Attorney Guay asked if Mr. Bacon is going to be putting the video on. Mr. Jackson stated yes. Attorney Guay gave the oath to Ms. Merrill. Mr. Jackson asked questions of Ms. Merrill. He asked her if she observed Mr. Ingraham's horse going on a break. Ms. Merrill stated she did. Mr. Jackson asked when that horse went on a break did you notice any action by any of the other drivers in that race. She noticed that Mr. Graffam took into his horse. Mr. Jackson asked if he had taken into his horse prior to that. Ms. Merrill stated "yes". She also stated that the testimony that Mr. Graffam gave she thought was correct because he was diffidently see-sawing his horse because he was trying to get control of the horse as he was coming around the turn. As they were going up the backside to the quarter pole, Mr. Ingraham's horse broke and of course he took into his horse and lost ground. She felt that she could see that Mr. Graffam took into his horse at that time so that he would not run into Mr. Ingraham. Mr. Jackson asked as she understands the rule Chapter 7, Section 54, subsection 1-M which states commit any act which shall impede the progress of another horse or cause him to "break". Upon further review of the film, did you determine that Mr. Ingraham's horse did impede the progress of Mr. Graffam's horse. Ms. Merrill stated "yes". Mr. Childs asked Ms. Merrill what her understanding of when a driver must file an objection. Ms. Merrill stated that he must file an objection in the first turn with the first turn judge before he dismounts. Mr. Childs stated that Mr. Graffam did not file an objection. Ms. Merrill stated that he did not. Attorney Guay asked if any of the Commissioners had questions of Ms. Merrill. Commissioner Reed asked Ms. Merrill on the matter of an objection would it be fair to say in the many years that you have seen observing races you have seen events that you thought ought to resulted in an objection but did not. Ms. Merrill stated "yes". Mr. Jackson stated that in the years that you have served as an associate judge there have been several instances where the judges have made placings without there being an objection filed is that true. Ms. Merrill stated that's correct. Mr. Jackson asked is it also true that nobody has to file an objection in order for the judges to take action in a race. Ms. Merrill stated that's correct. Mr. Jackson stated that whether Mr. Graffam filed an objection or not had no bearing on what your decision was. Is that correct? Ms. Merrill stated yes that is correct. Mr. Jackson asked as associate judge working with Mr. Bacon feel that it would have been important in determining the outcome of your findings by talking with either Mr. Ingraham or Mr. Watson. Ms. Merrill stated that she felt talking with Mr. Graffam was sufficient. Attorney Guay asked for any questions of Mr. Childs. Mr. Childs stated that he no further questions. Attorney Guay asked Mr. Jackson for his next witness. Mr. Jackson asked for Ronald Merrill. Attorney Guay gave the oath to Mr. Merrill. Mr. Jackson asked questions of Mr. Merrill. He asked him in the many years as an associate judge, has he along with other judges made decisions concerning the outcome of a race or placings without objections being filed. Mr. Merrill stated yes. Mr. Jackson stated that didn't bar him from taking action because someone didn't file an objection. Mr. Merrill stated no it does not. Mr. Jackson asked Mr. Merrill on the evening in question during race 5 did you observe Mr. Ingraham going on a break. Mr. Merrill stated in the first turn, yes. Mr. Jackson stated that Mr. Graffam's horse was a little hot and he was see-sawing trying to bring the horse under control. Is that correct? Mr. Merrill stated going into the first turn the horse was very unmanageable. Mr. Jackson stated coming out of that first turn was the horse back on gait so to speak. Mr. Merrill stated yes prior to the horse Mr. Ingraham was driving it appeared to him that Mr. Graffam's horse was back under control. Mr. Jackson asked when Mr. Ingraham's horse went on a break what action did Mr. Graffam take. Mr. Merrill stated at that time again he believes his horse was back under control. He had to take into his horse because if not he was going to

run into Mr. Ingraham's horse. Mr. Jackson asked him when a driver takes into his horse does that usually indicate that they're losing ground. Mr. Merrill stated yes. Mr. Jackson asked if that is normally done during the race for any reason other than being interfered with or impeded. Mr. Merrill stated well yes but this is not the case here. You would take into your horse if he starts to get rough. Mr. Jackson asked if Mr. Ingraham followed the direction of the rule as it relates to a breaking horse. Mr. Merrill stated yes, he did what he should be doing under this particular circumstance. Mr. Jackson asked by doing so did he not slow or interfere or impede the progress of the horses directly behind him. Mr. Merrill stated yes. Attorney Guay asked Mr. Childs if he had any questions of Mr. Merrill. Mr. Childs asked Mr. Merrill what is the rule regarding of the placing of an objection. Is that supposed to be done on the track or can you place one after you get off your horse. Mr. Merrill stated that in theory when they had the patrol judge's stand you were supposed to put the objection in to the judge in the first turn then it went to the patrol judge which would be the starter. In his years of officiating that rule has been occasionally that if somebody puts in an objection before the official goes up. Mr. Childs stated that the procedure now a days is the driver is supposed to put an objection in through the starter. Mr. Merrill stated yes with the elimination of the patrol judges yes. Mr. Jackson objected to this line of question. Attorney Guay stated that he would allow it. Mr. Childs stated that previously we had judges in the first turn and the second turn and he is going to show exhibit 7 which is an oval representing a racetrack. He asked Mr. Merrill to describe exhibit 7. Mr. Merrill pointed out the first and second turn. Mr. Childs stated that when he first became a judge there would be a judge in the first turn, 8 to 10 feet off the ground. Mr. Merrill stated that is correct. Mr. Childs stated that judge in the first turn would was there to assist with the decision of whether to have an interference call granted or denied. Correct. Mr. Merrill stated that is correct. Mr. Childs stated due to monetary issues and other problems we dispense with having a set of eyes in the first and second turn. Correct. Mr. Merrill stated correct. Mr. Childs stated that the angle of the view greatly effects what a person's perception might be as to what occurred. Correct. Mr. Merrill stated yes. Mr. Childs offered exhibit 7 with the paddock added. Attorney Guay stated that it is being identified as a drawing of the track of Bangor. No objection from the state. It's admitted. Mr. Childs asked Mr. Merrill of his own observations his recollections today that Buckleberry Kate was quite unmanageable all by herself as she left the gate and went into the first turn. Correct. Mr. Merrill stated yes and he also noted that she was under control prior to the time she was interfered with the horse that made a break. Mr. Childs asked after Mr. Ingraham's horse straightens away going on the backside you stated on direct examination that Mr. Graffam's horse was then quite unmanageable. Mr. Merrill stated that he didn't state that. Mr. Childs stated that he has no opinion about whether Mr. Graffam's horse was manageable or unmanageable after the 8<sup>th</sup> hole. Mr. Merrill stated that he would have to watch the entire tape because they focused so much on the break. Mr. Childs asked if he talked with Mr. Watson at any point in time. Mr. Merrill stated no. Mr. Childs had no further questions. Commissioner Dresser asked Mr. Merrill if there was any discussion amongst the judges about placing Dancer Flicka behind Wally Watson's horse. Mr. Merrill stated yes. They looked at all views and there were going to be placings. Commissioner Dresser stated that the decision was made to not include Mr. Watson's horse in the placings. Mr. Merrill stated right. Commissioner McFarland asked Mr. Merrill if he recalled specifically if the judge in the starter vehicle was consulted or questioned with respect to this incident. Mr. Merrill stated that he honestly could not remember. Mr. Jackson asked Mr. Merrill that Mr. Childs has questioned the objection rule when it's supposed to be made who's supposed to be made to. This lack of an objection being filed is the center of the case. Attorney Guay objected. Mr. Jackson stated that several times there has been action taken by the judges when an objection

has not been filed, it that correct. Mr. Merrill stated yes. Mr. Childs asked Mr. Merrill if he is familiar with the rules. Mr. Merrill stated yes. Mr. Childs asked if he was familiar with rule section 55 racing objections. Mr. Merrill stated yes. Mr. Childs asked if he was familiar with the sentence that reads "any driver desiring to enter a claim of foul or other complaint of violation of the rules, must, before dismounting, indicate to the Judges his or her desire to enter such claim or complaint and forthwith upon dismounting shall proceed to the telephone in the paddock where ...". Mr. Merrill stated yes. Mr. Childs stated that Mr. Bacon testified earlier that that wasn't his understanding of the rule. Mr. Merrill stated that he was a little vague on what Mr. Bacon said. Mr. Childs stated that the objection could be made after the driver dismounted. Mr. Merrill stated yes and he did say that in an earlier statement that this rule is not applied to 100 percent that it is read there. If a driver does call in with an objection, before we go with an official sign we certainly will look at it again. Mr. Childs stated that the rule does require that the driver do so before dismounting. Mr. Merrill stated yes. Attorney Guay asked if there were any more witnesses. He administered the oath to Mr. Cushing. Mr. Jackson asked Mr. Cushing what his position was on the night in question. Mr. Cushing stated that he was filling in as the announcer. Mr. Jackson asked if he was near the judge's stand. Mr. Cushing stated he was in it. Mr. Jackson asked him if recalled Judge Bacon making a call to the paddock for Mr. Graffam. Mr. Cushing stated that he did. Mr. Graffam was on the track warming up and he asked him if he would over the PA direct Mr. Graffam to go back to the paddock to speak to the paddock judge. Mr. Jackson asked Mr. Cushing if he overheard that conversation. Mr. Cushing stated yes. Mr. Jackson asked if Mr. Bacon ask Mr. Graffam if his horse was interfered with. Mr. Cushing stated that he asked if he bothered him. Mr. Jackson asked what was the answer? Mr. Cushing stated that Mr. Graffam's response was he had to grab her. Mr. Jackson asked what other aspects of the industry is he involved in. Mr. Cushing stated yes, trained, drive and owner. Mr. Jackson asked as a drive what would that mean to him, he had to grab her. Mr. Childs objected to the question. Attorney Guay allowed the question. Mr. Jackson stated that Mr. Cushing is an experienced driver. Attorney Guay stated that he would allow the answer but he hasn't been qualified as a witness. Mr. Childs stated that he would stipulate to Mr. Cushing as an expert witness. Mr. Jackson stated that it is not an opinion he is asking for. He is asking Mr. Cushing what does it mean when you grab into a horse. Mr. Cushing stated that it can mean many different things. Obviously, one of them is if you're going to run into the person in front of you if the horse makes a break. If you want to take the horse off the gate if the horse is real hot in the head like Mr. Graffam testified earlier. You might see saw a horse. Attorney Guay asked for cross-examination. Mr. Childs asked Mr. Cushing you don't recalled Mr. Bacon saying to Mr. Graffam words to the effect of did he interfere with you or did he impede you. Rather, you recall Mr. Bacon saying to Mr. Graffam did he bother you. Is that correct? Mr. Cushing stated that he didn't recall the exact words. He did listen to the conversation between the two. He said did you see Mr. Ingraham's horse make a break. He said he did. He said did you have to grab your horse. Mr. Graffam said she was already hot, but he said when you saw Mr. Ingraham run did you grab her again. Did he bother or interfere with you. Mr. Graffam said he had to grab her. Mr. Childs stated that he didn't really answer the question from your prospective. Mr. Cushing stated it was kind of vague. Mr. Childs asked in his years of driving you've been going into the first turn and decided to back into a hole, correct. Mr. Cushing stated sure. Mr. Childs stated that when you back into a hole you take into your horse and slow your horse down to accomplish that goal, correct. Mr. Cushing stated most times yes. Mr. Childs stated that the definition of the 38 Interference reads "Interference" means any act, in violation of these rules which, by design or otherwise, impedes hampers or obstructs the forward progress of any competing horse or horses." If you're backing into a hole behind Mr. Campbell as Mr. Graffam has described for us, Mr. Graffam's intent at that point is not to make forward progress but he's going backwards, correct. Mr. Cushing stated that's his intent. Attorney Guay asked if the Commissioner's had any questions. Commissioner Reed asked Mr. Cushing isn't it true that many officials use the term bother as a generic categorization of something inappropriate has happened on the track. Mr. Cushing stated certainly. Mr. Childs asked Mr. Cushing when he's in a race are you bothered by other drivers and horses on the track. Mr. Cushing stated it has happened several times, yes. Mr. Childs asked if every time he is bothered, do you put in an objection. Mr. Cushing stated not as often as he should.

Attorney Guay asked if there were any other witnesses. Mr. Jackson stated no. The tape was reviewed at this point. Mr. Bacon gave his testimony of the tape. Ms. Merrill gave her testimony of the tape. Attorney Guay stated for the record that Ms. Merrill identified that a push of the video tape commencing at 42 seconds. Mr. Childs asked Ms. Merrill you see that Mr. Graffam is beside Mr. Campbell and then he settles in the hole behind Mr. Campbell. You heard Mr. Graffam's testimony today that at the 8<sup>th</sup> pole his game plan is to set behind Mr. Campbell and see what happens later. Ms. Merrill stated that she did hear him say that but as she is looking at this on the night that it happened she has no idea that is in his head and that is his game plan. Mr. Childs asked if they had a hearing after the race. Ms. Merrill stated that she's not sure if it was after the race or the next day. Attorney Guay stated that was the last question on that line. We are limiting ourselves to the video replay at this point. Mr. Childs asked Ms. Merrill that Mr. Graffam's horse was pacing smoothly after the alleged interference. Mr. Jackson objected. He doesn't believe that was Ms. Merrill's testimony. Mr. Childs asked her if the horse was pacing smoothly. Ms. Merrill stated not right now and that is after the break. Mr. Childs stated that the horse is a bit unmanageable after the break as well. Ms. Merrill stated that she thought he had a hold of her. Attorney Guay asked if there were any more questions for this witness. Mr. Jackson do you have any other witnesses relating to what they saw on this video tape? Mr. Jackson stated no. Attorney Guay asked Mr. Childs if he had any witnesses testify to the video. Mr. Childs stated Mr. Graffam. Mr. Childs stated that he was right beside Mr. Campbell at this point. Mr. Graffam stated yes. He stated that Mr. Campbell's helmet stays right on his number pad the whole time. He doesn't lose or gain his forward progress. Mr. Childs asked if Mr. Watson hollered at him or indicate that he was interfering with him. Mr. Graffam stated no. Attorney Guay asked if there were any other witnesses. He also asked if the Commissioners had any questions of the video tape. Commissioner Dresser asked to see the tape one more time in slow motion and also the backstretch shot. Attorney Guay stated that they are all set with the video tape. He asked for closing statements. Mr. Childs stated that the rule that is at issue here today did Mr. Ingraham's horse Dansan Flicka commit any act which shall impede progress of another horse in this case Buckleberry Kate or cause them to break. It was undisputed that Mr. Ingraham's horse did not cause Buckleberry Kate to break. There was no allegation of that whatsoever. Did Mr. Ingraham's horse commit any act which shall impede the progress of another horse and we also leave that in conjunction with the definition found in Chapter 1, Section 38 Interference" means any act, in violation of these rules which, by design or otherwise, impedes, hampers or obstructs the forward progress of any competing horse or horses." He submits to them that the person who knows best in this case is Mr. Graffam. He was driving the horse and he was asked after the race and he didn't even put an objection in. He thought he was interfered with and by rule you are supposed to put an objection in. He didn't. Rather he was called off the track and he went into the paddock judge's office and was asked did the horse bother you, did the horse impede you or did the horse interfere with you. Whatever the question was Mr. Graffam didn't say yes the horse did. Mr. Graffam said he grabbed into his horse. He explained here today he was grabbing into his horse leaving the gate, he was grabbing into his horse in the first turn, he was grabbing into his horse after Mr. Ingraham's horse settled down and was moving forward again. If you watched the video closely, and we're looking at the rule, obstructs the forward progress, Mr. Graffam wasn't going forward. That's not what he was trying to accomplish. He was trying to get behind Mr. Campbell and so he wasn't hung on the outside the hole mile, so there is no interference here. The conjecture was substantial here. Mr. Jackson stated that there were three individuals in the judge's stand observing that race that evening that testified that yes Mr. Graffam's horse was a little hot or maybe a little unmanageable; however, prior to the break of Mr. Ingraham's horse you could see from the tape and also listen to the judges testimony that that horse had become manageable. Then Mr. Ingraham's horse goes on a break he takes into that horse to bring it back on the gate tries to move it outside, but there's no room to move to the outside so Mr. Graffam's horse is sitting behind. Mr. Graffam has admitted that he took into his horse. In the evening of the race when he was questioned by Judge Bacon, were you bothered or were you interfered with or impeded whatever the terminology might have been. Mr. Graffam didn't answer the question directly. He said "I took into my horse". You can interpret that in any way you want to. Generally speaking when a driver tells you he's taking into his horse he's taking into it because he is slowing the horse down. Mr. Graffam didn't tell the judges that evening the reason he

took into his horse he was trying to get in behind Mr. Campbell. He didn't explain that. He just said he took into his horse. From the film and from Mr. Graffam's own admission, he had to slow his horse down. If you look at the rule it says commit any act which shall impede the progress of another horse or cause it to "break". The definition says "Interference" means any act, in violation of these rules which, by design or otherwise, impedes hampers or obstructs the forward progress of any competing horse or horses". Mr. Graffam had nowhere to go so he had to take into his horse to prevent him going over Mr. Ingraham. Therefore, Mr. Ingraham without any intent did cause interference it impeded the progress of Mr. Graffam's horse. Attorney Guay closed the hearing. He directed the Commission to the notice of hearing to decide whether the horse, Dansan Flicka, caused interference with another horse pertaining to the race in question the 5<sup>th</sup> race at Bangor Raceway on October 17, 2014. That would be the first to deliberate and if there is a finding that the horse did interfere then you need to review the penalty imposed by the judge. You need to determine whether or not there is sufficient evidence of the interference. Commissioner Dresser asked for a motion to open up the discussion. Commissioner Reed for purposes of discussion made a motion to deny the appeal. Commissioner McFarland seconded. Commissioner Reed stated that seeing the video several times to him it was quite clear that there was an act of impeding or obstructing progress of Mr. Graffam's horse by Mr. Ingraham's horse, and whether or not it is relevant Mr. Graffam an excellent driver who is still relatively new, Mr. Ingraham has driven thousands of times and there might be an emotional reluctant to file an objection. When asked if he was interfered with, I understand the testimony to say he took into his horse which is sort of like a code word he did he bother you. He didn't want to say, Mr. Ingraham interfered with him. He took into his horse. He took that to mean that he was not able to move forward at a rate that he would like to have done. Commissioner McFarland stated that he concurred with Commissioner Reed what he has stated. Having been a basketball official for many years and understanding trying to interpret rules on the spur of the moment and not having the luxury of video tapes and stop action. With respect to what he has observed here today and he knows it's a tough decision in trying to be fair with all the parties in that respect. He thinks it's clearly been proven that as far as the definition of interference obstruct the forward progress did in fact happen with respect to after this other horse was somewhat rough gated, and then came back on stride and then the interference in his opinion caused it to lose ground and have to take whatever action he decided to take. Also within the rule, it says commit any act which shall impede the progress of another horse. He thinks for Mr. Ingraham and his horse it was never his intent to cause that action but to follow the rules he had to take action which in fact caused the interference or the impediment of forward progress of the horse behind him. Therefore, he would concur with denying the appeal. Commissioner Dresser stated that if they had not heard the testimony from Mr. Graffam today that his intent was to take his horse back not only to try to make her more manageable but to set into the hole she would agree completely. Watching the video without that explanation it does appear that when Mr. Ingraham's broke it interfered with his horse, but hearing that explanation makes it a little more difficult for her. We have the luxury of being able to ask everybody questions and hearing all of this and this is the luxury that the judges didn't have that night and because of this she realizes now 2 to 1 and she would be out voted but she is going to disagree and she is going to say that no interference occurred. Commissioner McFarland stated with respect to making judges' decisions, this evening there were three officials in the box that have many years of knowledge and experience of what they have to make a call on in a matter of a few seconds. And the fact is, you may not ask all of the right questions immediately at that time but they have to make that decision. They made that decision and some of the information that was received here today was many weeks after the incident and gave people time to assemble their thoughts and so on and so forth. He would not call anyone confused with respect to that but certainly what was happening currently at the time those facts and information could have changed somewhat in the forgoing months. He would have to in most cases unless there is a preponderance of evidence that proves that the officials are wrong he will always support the officials. He also wanted to make a note of the fact that there wasn't an objection. The fact that there wasn't an objection was because there doesn't have to be an objection. That's why you have officials. If they make a mistake and its appealed then it's up to us to correct that decision if there is evidence to show likewise. In this case he does not believe there was. Attorney Guay stated he would like to make a statement in terms of a legal standard he is not in any



way making this statement in relation to the proposed vote. This is a de novo proceeding there's not deference given to the decision. There is not the need to prove that they were wrong. What you do is consider the evidence that you heard today and determine whether or not there was a violation. It's not that the appellant has the need to prove that the judges were wrong and to say that they were right based on the information that they had on the night of the decision. That's not the question. The question is based on the information that you received today that you say whether or not the decision is right. He wanted to be very clear on that. Commissioner McFarland stated that being a new commissioner and this being one of his first opportunities he may sometimes not express himself in the legal format that he is supposed to follow, so if he has not done that he is sorry and he will try to improve on his proceeding demeanors. Commissioner Dresser stated that she would repeat again, she is making her decision on what she heard and what she saw today and again the judges did not have the luxury of having the time and the opportunity that they have had today. They are supposed to make their decision based on what they see today and that is what she will be doing. She called for the vote. Vote 2-1 (Commissioner Dresser opposed) the appeal is denied. Attorney Guay stated that under the rule you have the ability to modify the consequence. It doesn't mean you have to so now you would vote on whether to maintain the placing or entertain an alternative. Commissioner Dresser asked for a motion. Commissioner Reed made a motion based on the evidence that we have seen and heard today that they maintain the penalty as imposed. Commissioner McFarland stated that he doesn't know specifically the rule with respect to placings after an incident that's an official's job. The fact that he is not aware of how that can work with the exception of what he saw there today he would concur with Commissioner Reed on leaving the finding as is. Commissioner Dresser asked if he was seconding the motion. Commissioner McFarland stated that he is seconding the motion. Commissioner Dresser asked for a vote on the motion. Those in favor of leaving the placing as is, please raise your hand. Vote 3-0.

2. Commissioner Dresser stated that they would be taking item one Charlene Cushing, Complaint Number 2014 MSHRC 0018. She passed this over to Attorney Guay who would be acting as hearing officer. Attorney Guay stated that his understanding prior to opening the hearing the State would like to proposed a motion for the Commission to consider. Mr. Jackson stated that he would ask the Commission to continue this matter for a period of seven months or until July 1, 2015 and that if there is no violations by Ms. Cushing between now and July 1, 2015 that this case be dismissed; and if there are violations that this case would be before this Commission for further action. Attorney Guay stated that there's a motion that would require the Commission consideration before we open up the hearing. Commissioner Dresser stated that as the hearing officer that he would have to hear that, don't you. Attorney Guay stated ok. He asked Mr. Jackson what was the basis of his motion. Mr. Jackson stated that his basis for his motion is that this is Ms. Cushing's first violation of a controlled medication program. He calls it a controlled medication program it's a permitted medication program. It's Flunixin and the concentration was 26.2 ng per milliliter. He believes that if you had adopted the rules, and he knows it had no bearing on this, but under the new rules had they been in placed this would be considered a non-violation. Commissioner Dresser stated that she was confused. Mr. Jackson stated that if you look at Chapter 17 violations that we have been working on that this would be considered a first offense and it would be a written warning only. Commissioner Dresser stated the ones in the pipeline. Mr. Jackson stated yes and since they are not in place he would like to treat this like those they did in 2013 and offer Ms. Cushing the same opportunity they did those in February of 2014. Commissioner Dresser stated to Attorney Guay that this would be a time for you because this is Commissioner McFarland's first medication violation for a positive hearing to just explain what our options are or what our options aren't when it comes to warnings and adjudicatory decisions and so on. Attorney Guay stated that the major form of dealing with violations of medications or any violations of the rules of the commission would be an adjudicatory hearing, and we have a significant amount of guidance in terms of what penalties apply to what specific violation. That occurs after a hearing. The second option would be for someone to admit to a violation and that

there would be a voluntary assumption of a consequence and that may be known as a consent order so the person admits that the violation occurred. Then the Commissioners can give a consequence including because it's consensual a lack of a disciplinary finding, so there could be an admission and an agreement that if a future violation occurs then this admission of a violation would be used towards a first violation. That's a consent agreement. It's possible to have an admission that someone did something wrong but yet not suffer a consequence. Another option which is what we did with a class of violations last year is to not open the hearing but to continue the hearing for a time period and then if the Commission wishes to continue the hearing to that date certain then there would be a dismissal on that date, we can say July of 2015, if no further allegations or violations have occur. The case would never be hearing at that point in time the case would be dismissed there would be no violation and there would be no admitted violation. The last thing is from a policy prospective saying well the rules have changed and although this was a violation at the time our current rules don't anticipate this being a violation in the future under prosecutorial discretion we would dismiss the violation all together, so sort of those four options. What he heard Mr. Jackson say was to treat this like they did last year. That would have been the third description course of conduct which would be to continue this matter until July, and if she doesn't have another violation dismiss the complaint in July. Commissioner Dresser stated what she wanted Commissioner McFarland to understand was the way our penalty structure is setup right now we don't have the ability to give a formal warning which would be considered adjudicatory discipline without suspending the horse for thirty days and forfeiture of the purse. While she knows a lot of people think why don't you just give warnings, it's because it puts it in a whole other category so that's why we look at the options that Attorney Guay has outlined and that Mr. Jackson has suggested as opposed to going forward with the hearing. Attorney Guay stated the rule is changing and right now your handcuffed. Commissioner Dresser asked for a motion. Commissioner Reed asked if Ms. Cushing has admitted to a violation. Commissioner Dresser stated that they haven't gotten that far yet. Attorney Guay stated that she would not admit if we treated hers as we did the others we wouldn't even open the hearing. Commissioner Reed asked didn't we not ask each of those individuals individually if they agreed with the admission of a violation. Attorney Guay stated that he didn't think so they just dismissed the cases outright. Mr. Jackson stated that they did ask each one in February if they understood and agreed to the continuance based on the fact that if there was another violation between this period and June 12<sup>th</sup> that this case would be brought back and would be prosecuted, and every one of them agreed that they understood and accepted the condition. Attorney Guay stated what that did was it prevented them in seven or eight months saying, well I should have had my case heard seven or eight months ago so they agreed to have it continued. Theatrically, they would be at some disadvantage through time going on if on certain types of violations for example witnesses may not be available and it might make their defense harder. Mr. Jackson stated that if they did admit guilt then the Commission would have to take action; therefore, we didn't ask them to own up to what they had done but if they did it again within that time frame that the current violation would be brought back and would be prosecuted. Attorney Guay stated that from all practical purposes the ability to defend a drug violation because it is a level violation is very difficult so an admission as a prosecutor he would feel an admission for this type of violation is not necessary because it is a level violation the blood level was "X" and our rule says "Y" and that's very difficult to defeat. If it was he said she said, then you may have a different concern that you want to have an admission because there's a disputed fact. In this case you've got blood level it's pretty difficult to dispute that evidence. Commissioner Dresser asked what would we like to do. Attorney Guay stated that he generally grant continuances only for one meeting you know for the ones like today someone that is ill or something in his capacity of hearing officer. But to agree to dismiss that's only something you have the ability to do. Commissioner Dresser asked for a motion. Commissioner Reed stated that he is desperately seeking how to make it. Attorney Guay stated that the case be continued until July 2015 and if no further

allegations or violations occur with this licensee the case will be automatically dismissed. Commissioner Reed stated “so moved”. Commissioner McFarland seconded. Commissioner Dresser asked if they had any discussion. There was none. Vote 3-0. Attorney Guay stated that this case is continued and not dismissed.

Mr. Jackson stated that he would ask the Commission to continue under the adjudicatory hearings number three and number four. Commissioner Dresser stated that her request would be that to continue them for a month until their next meeting and that notice be hand delivered to her so that we don’t have any question as to whether or not she received it. Attorney Guay granted the continuance in the matter of Donna Sprague.

#### UNFINISHED BUSINESS:

1. Commissioner Dresser stated that they will take action on the Written Decision and Order for the Licensing of the Off-track Betting Facilities and Live Pari Mutuel Race Meets, Awarding of Race Dates, and Authorization of Full Card Simulcasting. She asked for a motion on the Written Decision and Orders as presented. Commissioner Reed made the motion. Commissioner McFarland seconded. Vote 3-0.

#### NEW BUSINESS:

1. Commissioner Dresser stated that they will establish the Sire Stakes Schedule for 2015. Mr. Kelley stated that the Sire Stakes Advisory Committee met last Monday. The Committee voted to go back to the super final schedule, and what that does is it takes the 2 year olds in July and moves them to September. Another fact about this schedule is it goes a week later and starts a week later with the 3 year olds. They have never raced that late in October. Commissioner Dresser asked if they have the same number of legs. Mr. Kelley stated yes. Commissioner Dresser asked if he has gotten approval from Scarborough Downs to put all of these races on one date. Mr. Kelley stated that he has not. Commissioner Dresser stated that she doesn’t think they should be approving the calendar without them being on board. Mr. Kelley stated that is a safe assumption. Mr. Kelley asked Mr. Sweeney if Scarborough Downs would give them his consent. Mr. Sweeney stated that Scarborough has always been a proponent of the super weekend. He thinks they can work with that to get some really good media for the super day. He also thinks it would be good to hold it on a Saturday in the fall rather than Sunday because of football, so the short answer is they would love to have a super day for the Sire Stakes Finals. Commissioner Dresser asked if we are bound to approve this now. Is it rule driven? Mr. Jackson stated no. It’s calendar driven. The Harness Racing Promotional Board would like to get the approved calendar as quickly as possible before January 1. He asked Mr. Kelley if it would be possible on September 4<sup>th</sup> to move the 2 year old colt pacers to Scarborough on the 5<sup>th</sup> and then the 2 year old colt pacers from the 11<sup>th</sup> to the 12<sup>th</sup> on Scarborough. Mr. Kelley stated that would work. Commissioner Dresser asked if they had any thought to moving the finals from Sunday to Saturday. Mr. Kelley stated that they discussed that. Mr. Cushing stated that it was a coin flip and that really isn’t a problem. Mr. Cobbett stated that Saturday would be a better day because your post time is 25 minutes earlier. The finals day is a big draw and he doesn’t see any decrease in attendance. Mr. Kelley stated that they would move to the 24<sup>th</sup> of October. Mr. Sweeney stated that they would like to request that they be allowed to card 12 dashes that day. Commissioner Dresser stated that would have to be done though the reopening of race date assignments at our February meeting. She asked for a motion to approve the proposed schedule as presented with the following changes. The 2 year old colt pacer from September 4<sup>th</sup> to September 5<sup>th</sup> from Windsor to Scarborough Downs and 2 year old colt pacer would be moved from September 11<sup>th</sup> at Scarborough Downs to September 12<sup>th</sup> at Scarborough Downs and then the super finals day moved from October 25<sup>th</sup> to October 24<sup>th</sup>. Commissioner Reed moved the motion. Commissioner McFarland seconded. Vote 3-0. Mr. Kelley

asked to bring up one other item. The Committee asked the rule of the draw of the divisions not the draw of the post positions. He believed the Sire Stakes rule says divisions will be drawn randomly and not assigned. Commissioner Dresser asked what rule he was referring to. Mr. Kelley stated he couldn't find it. Mr. Jackson stated what he is trying to get at is he wants to be assure the participants there will be no seating of the divisions. Commissioner Dresser asked if there was anything in the rules that allows it to be assigned. Mr. Jackson stated no. Mr. Kelley stated that he has had some complaints about people witnessing divisions being assigned. Who is responsible, according to the rule, his assumption is the Presiding Judge is responsible for the draw. Is there anything that requires the Presiding Judge to be present at all of these draws. Mr. Jackson stated that it has to be either the Presiding Judge or an Associate Judge. A judge has to be present. Mr. Kelley asked the Commission to make sure the judges that are present know what the rule is or isn't. Commissioner Dresser stated that is a much bigger issue than the draw. What she suggested is to send a letter to Mr. Jackson and ask him to bring to the various judges' attention that they would like to ensure and then he could forward that to them for the meeting of the judges in the spring. Mr. Jackson stated that Mr. Canney or Mr. May are usually present at all most all of the draws. The only time it becomes an issue is when they are at Presque Isle. Mr. Kelley stated that the state stewards will be the presiding judges' designee. Mr. Jackson stated no, they are present to observe the draw. They try to assure the participants in harness racing that there's no hanky panky. Mr. Kelley stated that there is also the rule says there is to be a horseman at all the draws. Mr. Jackson stated that is correct. That should be the horsemen's representative that has been either elected or appointed for that meet or someone who he has requested to replace him. Mr. Kelley stated that is physically almost impossible because when you talk about the draws at all these fairs you're going to have someone being there at 9:00 a.m. for the draw and then come back for whatever time for the races that day if they live 2 or 3 hours away. It is very difficult to have someone at these draws. That's why he was trying to get at who is responsible for the draw according to the rule. He will put together something in writing and send to Mr. Jackson. Commissioner Dresser stated that if you or anyone has any knowledge of something that's been done inappropriately it needs to be brought to the attention of the state steward's or to Mr. Jackson so that something can be done. What she is finding that people tend to discuss things, but it never gets brought to the next level. Mr. Kelley stated that the problem is and generally speaking as an observer is it's difficult for a horsemen to go to Mr. Jackson or whoever about the race secretary because he's got to be a little bit careful about what's going to happen to him later from certain actions happening. Commissioner Dresser stated that maybe it can run through one of the organizations. A complaint is a complaint. Ms. Perkins asked for a written procedure because, for example, after they figure out who the couples are and entries are there's supposed to be a list and they are supposed to be divided properly. That's what they're not doing. Commissioner Dresser asked if it is rule driven. Ms. Perkins stated that it's not in the rules, but she thinks there is a written procedure on how to do a draw. Mr. Jackson stated that at the fairs the race secretary puts together the draw and gives it to the presiding judge and they've already been sorted and all he does is draw and the pill. He doesn't look to see if they've been split by the owner then by trainer and the rest divvied up. Mr. Kelley stated that he thinks that's the root of their problem. Commissioner Dresser stated to Mr. Kelley to include that within his request as to stake races and we can pass it along and address that at the judges meeting in the spring. Mr. Canney stated that this has been going on for a long, long time. The breeders need to elect somebody to attend the draws. It was getting so bad at the overnight draws at Bangor that they would announce, you've got 5 minutes to send somebody down. Nobody came down so Mr. Canney said he would do it. Mr. Kelley stated that it's a very difficult problem. Ms. Perkins stated that they've tried to always get somebody there from the breeders. Commissioner Dresser stated that they will start there.

Commissioner Dresser stated statutorily the Commission has the authority to immediately suspension a person upon an allegation of a violation for mediation. What she would like to see is, just because in today's world it's not, we've got the obvious lag with their results coming out of the lab; she would like to see them suspend that practice at least temporally to see if it works, and no one would be subject to a suspension unless or until they were given the suspension by the Commission as a result of the finding. Mr. Jackson stated that when he first came on board with the Commission, they were not imposing the statute or the rule and it got to a point where they were finding that maybe some action needed to be taken. The problem being is if you suspend someone for 30 days pending a hearing before the Commission. It could be 45 days before you get before the Commission and someone sets down for 30 days then they're back in business before they come back before the Commission or they ask for a stay or whatever they may do. There is a tremendous cost involved in getting a split sample analyzed. He is in an agreement with Commissioner Dresser because they've discussed this as well. Commissioner Dresser stated that there are two requirements for eligibility for a stay. One is a closed question of material fact and one is a disputed rule interpretation. If someone request either DNA testing or split sample testing then that constitutes a closed question of fact and she granted the stay, but what Mr. Jackson said that is an expensive way to defer the hearing that you're entitled to. Commissioner McFarland stated that he wasn't totally familiar with the subject matter, in that respect, but certainly it doesn't make any sense to have a 30 day immediate suspension and then come back months later to find out what the resulted findings are. He would certainly go along with suspending this immediate suspension provision. Commissioner Dresser asked for a motion to that effect. Commissioner Reed moved the motion. Commissioner McFarland seconded. Vote 3-0. Commissioner Dresser asked Mr. Jackson to notify those that are affected by this.

#### REPORTS:

1. Commissioner Dresser asked for the executive director's report. Mr. Jackson stated that they are winding down with four more races at Scarborough Downs. He would like to have maybe two meetings in January.

#### OTHER BUSINESS:

1. None.

#### PUBLIC COMMENT:

Commissioner Dresser asked for public comment. Mr. Sweeney stated that about a year ago he and a few others in the room started out reviewing the rulebook. The Commission seems to be spending a lot of time looking at positive test violations that would be done away with if only we could get to rulemaking. They've made some recommendations to cover a lot of the problems that we're encountering right now instead of finding backdoor approaches to deal with it; he strongly urges that we get very serious about reviewing the changes that the committee recommended.

Mr. Jackson stated that we have approval from the Governor on Chapter 11 and 17 and we are waiting on Chapter 21. If it is the Commission's wish, he would go forward and advertise Chapter 11 and 17 and wait on Chapter 21. Commissioner Dresser stated that they need that one change in Chapter 9 to catch up. Do we have the final wording? Mr. Jackson stated that he has the final wording and we will wait and see if there are any other changes to Chapter 9 before we went to the public hearing. Mr. Sweeney asked if they go ahead with Chapter 9 in conjunction with Chapter 11 and 17 does that mean the Governor has to look at Chapter 9 before he can approve.

Commissioner Dresser stated no that would be just that one provision. It's taken us 8 or 9 months to get the pending rule changes through. There is no way we're going to get Chapter 9 as a whole dealt with and in place in time for next year. Mr. Sweeney stated that won't delay us getting to public hearing on Chapter 11 and 17. Ms. Perkins stated that she was under the impression last time you asked if we could do Chapter 9 and they did do it. Mr. Jackson stated that we will send over Chapter 11 and 17. Commissioner Dresser asked if they could go with a 30 day written comment for Chapter 9 for that one provision. Mr. Jackson stated that they could go that route as long as everyone is in an agreement.

The meeting adjourned at 12:43 p.m.

Respectfully submitted by:  
Henry W. Jackson  
Executive Director